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EU sanctions: exit strategies

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The agreement reached in Vienna over the Joint Comprehensive Plan of Action (JCPA) between Iran and the E3+3 (France, Germany, the UK, China, Russia and the US) lays the ground for the gradual lifting of restrictive measures imposed against the Islamic Republic. Having already activated a first round of limited (and reversible) sanctions relief alongside the US in January 2014, the EU is now set to adopt an 'exit strategy': a procedural roadmap to ease punitive measures in accordance with Iranian compliance.

With a track record of effectively rewarding acquiescent targets, the EU stands out as a responsive 'sanctioner'. In contrast to the US, the EU has repeatedly adopted a strategy aimed at incentivising progressive compliance with economic and diplomatic pay-offs.

Lifting sanctions

The lifting of sanctions is technically less difficult than often presumed. Following a heated debate at the United Nations Security Council (UNSC) on the embargo against Iraq in the late 1990s, the UN moved from enacting open-ended sanctions to adopting so-called 'sunset clauses' which foresee a date for the expiration of restrictive measures. The EU was quick to start inserting such clauses in its CFSP sanctions acts, which are envisaged to be reviewed once a year. However, they also stipulate that they 'shall be kept under constant review', and foresee the possibility that they 'may be renewed, or amended as appropriate' (as was the case of Syria).

While open-ended sanctions regimes make continuation ostensibly easier than termination, sunset clauses reverse this situation. In theory, each EU member state can veto the renewal of sanctions on account of the unanimity requirement, thereby precipitating an abrupt end to the measures. However, to date, no single member state has ever vetoed the renewal of a sanctions regime. While the process of building consensus within the Council can be time-consuming, it testifies to member states' commitment to a common foreign policy.

Terminating a sanctions regime is easier for the EU than for the US. In the EU, a unanimous decision by the Council suffices to lift sanctions, as no parliamentary approval – either by the European Parliament or by national assemblies – is required. In the complex US system, certain sanctions can be lifted by the president, while others – typically the most severe – can only be removed by Congress. Although the loosening of sanctions regimes is often initiated by the president, congressional approval is necessary for their complete termination. The case of Burma/Myanmar illustrates this well: the Oval Office removed all restrictions within its power, while congressional measures remain in place. Similarly, the current rapprochement with Cuba consists exclusively of steps taken by the Obama administration, while the trade embargo

will continue as it is embedded in congressional legislation.

It might seem paradoxical that reaching an agreement between 28 member states is more likely than obtaining a two-third majority in a single national parliament. The difference, however, does not lie in the decision-making procedures but in diverging approaches to the use of sanctions: the US Congress is usually reluctant to lift sanctions before full compliance has been achieved for fear that the target will cease to make progress in the absence of pressure.

By contrast, the EU has repeatedly demonstrated its readiness to terminate sanctions in the face of visible progress made by the targeted leadership despite the absence of full compliance. Accordingly, restrictions are removed to give way to the trade and aid toolbox, better suited to support further progress.

The track record

A relevant example is Myanmar. The EU once had one of its most comprehensive sets of sanctions in place against the military leadership of the country, featuring rare measures such as an embargo on gems and timber and the suspension of trade preferences. Although the reform process launched by the new civilian leadership in 2011 fell short of satisfying the demands originally formulated by the EU, the Union adopted a pragmatic approach which sought to facilitate political change. It chose to reward unprecedented steps such as the release of political prisoners, the legalisation of trade unions and the recognition of the freedom of assembly.

The Council followed a three-stage process. First, it suspended the application of the visa ban and asset freezes on certain cabinet members. In the second phase, it suspended all sanctions except for the arms embargo, while it increased development aid and strengthened dialogue with the authorities. In the final stage, trade preferences were reinstated and aid was doubled. The scope of assistance was extended with a view to encouraging democratic reforms and to aid the peace process, thus supporting the original objectives of the sanctions.

The phasing out of sanctions on the Uzbek leadership followed a similar pattern. In contrast to Myanmar, the process started barely a few months after the adoption of sanctions. While the Council first demanded that Tashkent allow an international enquiry into the massacre of civilians in Andijan, it eased sanctions following the launch of a mission which combined officials from EU member states and from Uzbekistan. The lifting was, again, gradual. First, the visa ban on senior officials was suspended. Apart from allowing the study group to investigate the events, Tashkent abolished the death penalty, released human rights defenders and allowed the resumption of visits by the International Committee of the Red Cross to prisons in the country. Sanctions were then eventually lifted two years after their imposition.

Lessons from Cotonou

Exit strategies are easier to frame when the 'sanctioner' clearly outlines its goals in phases. While CFSP sanctions regimes routinely spell out the reasons for imposition, exit strategies could be optimised with the help of concrete, piecemeal demands.

The EU has a rich practice of specifying goals when it comes to the suspension of its agreement with individual countries from the African, Caribbean and Pacific (ACP) group in response to breaches of human rights, democratic processes or the rule of law. Under article 96 of the Cotonou Agreement, consultations are held with the leadership at fault with the aim of agreeing on a 'roadmap'. The formulation of tangible objectives provides target countries with clear parameters against which progress can be measured, thereby making the reversibility of the measures more credible and facilitating the re-establishment of cooperation. Targets are provided with technical assistance to help them meet compliance requirements, and the process is accompanied by regular monitoring missions to verify progress and help address possible deficits.

The agreed deal with Iran stands out as a test case for the EU. Although an intransigent US Congress may prove a hindrance to the implementation of the JCPA, the EU can lead the way in signalling its commitment to reward compliance through the communication of a phased exit strategy. While it can encourage Tehran to abide by the stipulations of the agreement, the activation of an EU exit strategy can also lessen Iran's stigmatisation as a 'pariah' state and expedite the restoration of diplomatic and commercial relations with an important regional player. At a time when the use of sanctions as foreign policy measures has come under fire in UN bodies such as the UN Human Rights Council, it is important to lend credence to their reversibility.

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